

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–5533–N2]

Medicare Program; Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants—Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Payment advisory.

SUMMARY: This advisory is to update the submission date listed in the previous **Federal Register** document published on September 17, 2020, titled “Medicare Program; Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants” that provides information to certain clinicians who are Qualifying APM participants (QPs) and eligible to receive an Alternative Payment Model (APM) Incentive Payment that CMS does not have the current billing information needed to disburse the payment. This update allows these clinicians to provide information to CMS regarding their billing information by December 13, 2020 in order to receive this payment.

DATES: December 7, 2020.

FOR FURTHER INFORMATION CONTACT: Tanya Dorm, (410) 786–2216.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare Quality Payment Program, an eligible clinician who participates in an Advanced Alternative Payment Model (APM) and meets the applicable payment amount or patient count thresholds for a performance year is a Qualifying APM Participant (QP) for that year. An eligible clinician who is a QP for a year based on their performance in a QP Performance Period earns a 5 percent lump sum APM Incentive Payment that is paid in a payment year that occurs 2 years after the QP Performance Period. The amount of the APM Incentive Payment is equal to 5 percent of the estimated aggregate payments for covered professional services furnished by the QP during the calendar year immediately preceding the payment year.

II. Provisions of the Advisory

The Centers for Medicare & Medicaid Services (CMS) has identified those eligible clinicians who earned an APM Incentive Payment in CY 2020 based on their CY 2018 QP status.

When CMS disbursed the CY 2020 APM Incentive Payments, CMS was unable to verify current Medicare billing information for some QPs and was therefore unable to issue payment. In order to successfully disburse the APM Incentive Payment, CMS is requesting assistance in identifying current Medicare billing information for these QPs.

CMS has compiled a list of QPs we have identified as having unverified billing information. These QPs, and any others who anticipated receiving an APM Incentive Payment but have not, should follow the instructions to provide CMS with updated billing information at the following web address: <https://qpp-cm-prod-content.s3.amazonaws.com/uploads/1112/2020%20APM%20Incentive%20Payment%20Notice.pdf>.

On September 17, 2020, we published the Medicare Program; Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants (85 FR 57980), where we announced that submissions would need to be received no later than November 13, 2020. In this updated advisory we are extending this deadline, and submissions would need to be received no later than December 13, 2020.

If you have any questions concerning submission of information through the website, please contact the QPP Help Desk at 1–866–288–8292.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: December 1, 2020.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2020–26776 Filed 12–4–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 1

RIN 0991–AC17

Department of Health and Human Services Good Guidance Practices

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services finalizes its proposed regulations governing the agency’s release and maintenance of guidance documents. These regulations will help to ensure that the public receives appropriate notice of new guidance and that the Department’s guidance does not impose obligations on regulated parties that are not already reflected in duly enacted statutes or regulations lawfully promulgated under them.

DATES: This final rule is effective January 6, 2021.

FOR FURTHER INFORMATION CONTACT: Brenna Jenny, Department of Health and Human Services, 200 Independence Avenue SW, Room 713F, Washington, DC 20201. Email: Good.Guidance@hhs.gov. Telephone: (202) 690–7741.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Subject to certain exceptions, the Administrative Procedure Act (“APA”), 5 U.S.C. 551 *et seq.*, mandates that rules imposing new obligations on regulated parties must go through notice-and-comment rulemaking. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). This is true regardless of whether agencies frame these rules as sub-regulatory guidance. *See, e.g., Iowa League of Cities v. EPA*, 711 F.3d 844, 875 (8th Cir. 2013); *Gen. Elec. Co. v. EPA*, 290 F.3d 377, 385 (D.C. Cir. 2002). The APA’s procedural requirements sound in notions of good governance. *See, e.g., Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 741 (1996). Agencies can generally issue interpretive rules and statements of policy without conducting notice-and-comment rulemaking,¹ although such sub-regulatory guidance lacks the force and effect of law, and cannot bind regulated parties. *See, e.g., Shalala v. Guernsey Mem’l Hosp.*, 514 U.S. 87, 99 (1995).

To promote the appropriate issuance and use of guidance documents, and consistent with the requirements of Executive Order 13891, “Promoting the

¹ But see *Azar v. Allina Health Servs.*, 139 S. Ct. 1804 (2019).